RECENT DECISIONS

CARRIERS—WAIVER OF PASS—EMPLOYEE AS PASSENGER.—When engaged by the defendant company as a collector in its lighting department, the plaintiff was furnished a book of free coupon tickets over the defendant's electric car lines, which book contained a clause exempting the carrier from liability for negligence. The plaintiff, in the course of his duty, boarded a car and tendered his book, but the employee operating the vehicle did not lift a ticket, saying that there was no one on the car and that he knew the plaintiff. In alighting at his stop, the plaintiff, due to the careless operation of the car, was thrown to the ground and his foot run over. *Held*, plaintiff was a passenger to whom the company was liable for negligence. *Nashville Railway and Light Co.* v. *Overby* (Tenn.), 223 S. W. 997.

The general rule that the carrier cannot limit its liability for negligence applies not only to the case of a money payment for the transportation, but also where a pass is issued in consideration of some service performed by the employee, when it may be considered a part of such employee's salary. *Gill* v. *Erie R. Co.*, 135 N. Y. Supp. 355, *Klnck* v. *Chicago, etc., R. Co.*, 262 Ill. 280, 104 N. E. 669, 52 L. R. A. (N. S.) 70. But where the pass is purely gratuitous and not in compensation for services rendered the carrier, a stipulation limiting the carrier's liability, agreed to by the party accepting the gratuity, is binding. *Northern Pacific R. Co.* v. *Adams*, 192 U. S. 440; *Boering* v. *Chesapeake, etc., R. Co.*, 193 U. S. 442; *Atchison, etc., R. Co.* v. *Smith*, 38 Okla. 157, 132 Pac. 494.

Passes and free tickets are the equivalent of any other fares, and the use and waiver thereof are governed by the same principles that govern other payments. When the employee has no apparent right to waive the payment of a fare by a person seeking to become a passenger, one riding by the invitation or consent of such employee is not to be considered a passenger. *Clark* v. *Colorado, etc., R. Co.*, 165 Fed. 408, 19 L. R. A. (N. S.) 988; *Drogmund* v. *Metropolitan, etc., R. Co.*, 122 Mo. App. 154, 98 S. W. 1091. But where the apparent authority to waive payment of fare is vested in the employee, one riding by the invitaion or with the consent of such employee is a passenger, and the liability of the carrier attaches. *Chattanooga Rapid Transit Co.* v. *Venable*, 105 Tenn. 460, 58 S. W. 861; *Gabbert* v. *Hackett*, 135 Wis. 86, 115 N. W. 345, 14 L. R. A. (N. S.) 1070.

COMMERCE—TELEGRAM—TRANSMISSION BETWEEN POINTS WITHIN ONE STATE IS INTERSTATE COMMERCE WHEN RELAYED AT A POINT IN ANOTHER STATE.—The plaintiff brought suit to recover for mental suffering caused by a mistake in delivering a telegraphic message. The message was sent from Greenville, N. C., to Rosemary in the same State, but the message was transmitted by the company from Greenville, through Richmond, Va., and thence to its destination. It was physically possible to

transmit the message from Greenville to Rosemary on lines entirely within the State, but the route employed was the one ordinarily used by the company for messages between these points. The company defended on the ground that the message was sent in interstate commerce, and that, therefore, a suit could not be maintained for mental suffering alone, since the federal courts do not recognize such damages. *Held*, the plaintiff could not recover. *Western Union Telegraph Co.* v. *Speight*, 41 Sup. Ct. 11, reversing 178 N. C. 146, 100 S. E. 351.

Communication by telegraph is "commerce" within the regulation of federal authority in so far as it involves transmission of messages from one State to another, but it is subject also to State regulation in so far as it concerns transmission of messages wholly intrastate. *Postal Tel. Cable Co.* v. *State*, 110 Md. 608, 73 Atl. 679; *Pensacola Tel. Co.* v. *Western Union Tel. Co.*, 96 U. S. 1.

The transaction of sending and delivering an interstate message is indivisible, so that the mere fact that the negligence for which recovery is sought occurred in the delivery within one State does not entitle the addressee to damages under the State law as opposed to his rights under the federal law. *Norris* v. *Western Union Tel. Co.*, 174 N. C. 92, 93 S. E. 465; *Hall* v. *Western Union Tel. Co.*, 108 S. C. 502, 94 S. E. 870; *Postal Tel. Cable Co.* v. *Eubanks* (Miss.), 83 So. 678.

This principle, however, is not followed unanimously. In one State, at least, where a telegram was sent from another State, and through the negligence of the office within the State was not delivered, the measure of damages was held to be governed by the State decisions in the sending State and not by the federal decisions. *Western Union Tel. Co.* v. *Bailey*, 108 Tex. 427, 196 S. W. 516; *Western Union Tel. Co.* v. *Armstrong* (Tex. Civ. App.), 207 S. W. 592; *Mackay Tel. & Cable Co.* v. *Martin* (Tex. Civ. App.), 218 S. W. 133.

It has been settled by the Supreme Court of the United States in the case of the transportation of goods, that where two points are in the same State, yet if in the transmission by a carrier any part of the route is in another State, it is interstate commerce. *Hanley* v. *Kansas, etc., R. Co.*, 187 U. S. 617.

The courts of Virginia, Kentucky, Missouri, Indiana, Kansas, Oklahoma, North Carolina and South Carolina have held that a message originating at a point in a State on a contract to deliver it to another point in the same State is interstate commerce, if in the transmission the wires of the company pass over or through another State. *Western Union Tel. Co.* v. *Bolling*, 120 Va. 413, 91 S. E. 154, Ann. Cas. 1918C 1036; *Western Union Tel. Co.* v. *Lee*, 174 Ky. 210, 192 S. W. 70, Ann. Cas. 1918C 1026; *Foster* v. *Western Union Tel. Co.* (Mo. App.), 219 S. W. 107; *Western Union Tel. Co.* v. *Bushnell* (Ind.), 128 N. E. 49; *Klippel* v. *Western Union Tel. Co.*, 106 Kan. 6, 186 Pac. 993; *Western Union Tel. Co.* v. *Kaufman*, 62 Okla. 160, 162 Pac. 708; *Bateman* v. *Western Union Tel. Co.*, 174 N. C. 97, 93 S. E. 467, L. R. A. 1918A 803, and note; *Berg* v. *Western Union Tel. Co.*, 110 S. C. 169, 96 S. E. 248.

On the other hand, in Alabama and Arkansas a contract, made in the State for the transmission of a message from one point to another point

therein, is not subject to the federal law govering interstate commerce, though the telegraph company transmits the message by way of a relay station in another State. *Western Union Tel. Co.* v. *Glover* (Ala. App.), 86 So. 154; *Western Union Tel. Co.* v. *Sharp*, 121 Ark. 135, 180 S. W. 504.

When the principal case was before the Supreme Court of North Carolina, the court drew a distinction between *Bateman* v. *Western Union Tel. Co.*, *supra*, where the message could not be sent direct between the two points in the State, because there was, at that time, no line between the points which was wholly within the State. It would seem that there is more reason to regard the message a purely intrastate one where the only method of transmission between the two points necessarily carries the message beyond the limits of the State. But such is not the law. The interstate character of the message is to be tested by the actual facts as to its transmission. *Western Union Tel. Co.* v. *Bowles*, 124 Va. 730, 98 S. E. 645. Where the telegraph company sent a message to a point in the State through an exchange in another State, the message was interstate commerce, although the company had another route between the two points entirely within the State. *Taylor* v. *Western Union Tel. Co.*, 199 Mo. App. 624, 204 S. W. 818; *Western Union Tel. Co.* v. *Mahone*, 120 Va. 422, 91 S. E. 157; *Western Union Tel. Co.* v. *Bolwes*, *supra*.

But where a telegraph company, merely to evade liability under the State law, constantly transmitted messages between two points in the State by routing them through another State, the subterfuge did not render a death message an interstate one to prevent recovery under the State law for mental anguish and delay in delivery. *Watson* v. *Western Union Tel. Co.*, 178 N. C. 471, 101 S. E. 81. In *Western Union Tel. Co.* v. *Bowles*, *supra*, the Virginia court held that the interstate character of the message must be tested by the actual facts as to its transmission, and not by the motives of the company. This point is not passed on by the Supreme Court in the instant case, but the court did say, in the words of Mr. Justice Holmes, who delivered the opinion, that "the motive would not have made the business intrastate. If the mode of transmission adopted had been unreasonable as against the plaintiff, a different case would arise, but in that case the liability, if it existed, would not be a liability for an intrastate transaction that never took place but for the unwarranted conduct and the resulting loss."

The decision of the Supreme Court in this matter is in keeping with its policy to extend the meaning of interstate commerce, with a consequent diminution of the rights of the States.

FRAUD—KNOWLEDGE OF FALSITY OF REPRESENTATION—NOT ESSENTIAL TO SUPPORT AN ACTION.—The defendant was the owner of a large number of shares in a corporation which he believed to be solvent. The plaintiff owned a farm which the defendant desired to purchase and the defendant offered to exchange a portion of his stock for the plaintiff's farm. As an inducement to the plaintiff to make the exchange, the defendant represented the corporation to be a going concern and the stock to be a gilt edge security paying annual dividends. The plaintiff on the strength of the representations of the defendant traded his farm for the stock.